

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Benjamin Shelton	Team: Squad #11	CCRB Case #: 202200788	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 06/02/2020 10:15 PM, Tuesday, 06/02/2020 10:15 PM	Location of Incident: 4th Avenue, between Atlantic Avenue and Pacific Street	Precinct: 78	18 Mo. SOL 12/2/2021	EO SOL 5/4/2022	
Date/Time CV Reported Tue, 06/02/2020 10:52 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 06/02/2020 10:52 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. INSP James Palumbo	00000	927315	PBBS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Phu Tran	16392	939599	CT DIV
2. PO Brian Mejjamorel	22270	968636	067 PCT
3. PO Giancarlo Proietti	23706	963218	063 PCT
4. LT SA Ira Jablonsky	00000	930407	PBBS
5. CPT James Hepworth	00000	923441	071 PCT
6. PO Michael Kolnberger	02201	960767	POL LAB

Officer(s)	Allegation	Investigator Recommendation
A. INSP James Palumbo	Force: Inspector James Palumbo used physical force against § 87(2)(b)	

### Case Summary

On June 2, 2020, § 87(2)(b) filed this complaint with the CCRB via the agency's call processing system. This complaint was split from § 87(2)(b)'s original complaint, CCRB case 202003813.

On June 2, 2020, at approximately 10:15 p.m., multiple officers including PO Brian Mejia-Morel of the 67<sup>th</sup> Precinct and PO Giancarlo Proietti of the 60<sup>th</sup> Precinct engaged in a foot pursuit and subsequent arrest of § 87(2)(b) during a public demonstration against police brutality taking place at 4<sup>th</sup> Avenue between Atlantic Avenue and Pacific Street in Brooklyn. Insp. James Palumbo and PO Phu Tran, both of Patrol Borough Brooklyn South, approached the arrest scene. Insp. Palumbo stomped his foot on § 87(2)(b)'s upper body multiple times, including on his head (**Allegation A: Force, § 87(2)(g)**).

§ 87(2)(b) as noted in arrest report § 87(2)(b) was arrested for § 87(2)(b)

(BR 01).

Footage pertaining to this incident was taken and provided by § 87(2)(b) with his cellphone (BR 02), taken and provided by § 87(2)(b) with her cellphone (BR 03), obtained via an article published by the New York Times credited to § 87(2)(b) (BR 04) and an unedited version was provided by the New York Times' Legal Department and § 87(2)(b) (BR 05), provided by the NYPD Legal Bureau from the body-worn cameras (BWC) assigned to Capt. James Hepworth of the 71<sup>st</sup> Precinct and PO Michael Kolnberger of the Police Lab Section (BR 06-07), and taken by Julian Rodriguez with his cellphone and provided by Patrol Borough Brooklyn South's Investigations Unit through case file FI-2020-526 (BR 08).

Due to the media coverage this incident received in the New York Times, this case was added to the agency's Sensitive Case List.

### Findings and Recommendations

#### **Allegation A – Force: Inspector James Palumbo used physical force against § 87(2)(b)**

Footage from § 87(2)(b) cellphone addresses this allegation (BR 08). There are no on-screen timestamps. The video opens with § 87(2)(b) running across 4<sup>th</sup> Avenue at the intersection with Pacific Street as three uniformed officers chase him. As he runs toward Atlantic Avenue, an officer grabs his back or his shirt causing § 87(2)(b) to fall to the ground. He moves his legs and upper body on the ground as the three officers swing their batons at him, striking his body and legs. At 0:13, as § 87(2)(b) lies face down with four officers in blue uniforms attempting to restrain him, Insp. Palumbo, and PO Tran approach § 87(2)(b). They are the only officers in a short sleeve white shirt and NYPD Community Affairs long sleeve royal blue shirt, respectively. Two additional officers in standard blue uniforms move toward § 87(2)(b) to assist in the handcuffing. Insp. Palumbo's left foot moves up and down near § 87(2)(b)'s head but no discrete physical interaction between the two is clearly depicted. At 0:17, § 87(2)(b)'s head moves suddenly downward toward the ground. Insp. Palumbo's left foot is not depicted due to obstruction by other officers. At 0:21, Insp. Palumbo is already away from § 87(2)(b)'s direct vicinity and moving toward Atlantic Avenue before turning back toward § 87(2)(b)'s arrest.

Footage provided by the New York Times, a version of a published edited video they included in their July 14, 2020, article, "N.Y.P.D Says It Used Restraint During Protests. Here's What the Videos Show" (BR 16), address this allegation from the reverse angle of § 87(2)(b) footage (BR 05). There are no on-screen timestamps. At 0:00, § 87(2)(b) falls to the ground as three officers in blue uniforms chase him. They and other officers strike his body with batons as he

moves his body around. By 0:05, § 87(2)(b) appears to be in a fetal position covering the sides of his head with both arms without providing any active resistance as Insp. Palumbo and a fourth officer in a standard police blue uniform approach to assist. § 87(2)(b)'s head, neck, and back positioning remain largely stable from this point. Insp. Palumbo raises his left foot and brings it down upon § 87(2)(b)'s right shoulder-blade area. At 0:07, his foot slips onto the ground. He raises his foot again and brings it down directly upon the right side of § 87(2)(b)'s head as PO Tran approaches the arrest. § 87(2)(b)'s head moves suddenly downward under Insp. Palumbo's foot. PO Tran moves between the camera and § 87(2)(b)'s head. As PO Tran continues moving to reveal § 87(2)(b)'s head again, it appears that Insp. Palumbo's left foot is planted on the right side of his head. Insp. Palumbo appears to shift weight off his right foot, on the ground, as he raises his right heel as his left foot remains on § 87(2)(b)'s head. Footage published by the New York Times shows the same video, edited to slow down, and highlight the depicted force by Insp. Palumbo (BR 04). At 0:13, Insp. Palumbo raises his right foot off the ground and has his entire weight on his left foot which is still planted on § 87(2)(b)'s head. The video in the article is captioned as, "Several officers chase down and beat a person with their batons. A white-shirted officer runs up and steps on the person's neck."

Footage from Capt. Hepworth's BWC captures Insp. Palumbo and PO Tran approximately two to three minutes following this allegation (BR 06). The durational timestamp will be referenced. At 0:10, as Capt. Hepworth approaches Atlantic Avenue from 4<sup>th</sup> Avenue, Insp. Palumbo and PO Tran are depicted walking together toward Capt. Hepworth.

Using the iNPUT-ACE video analysis software to concatenate the above-referenced footage with additional clips from cellphone footage recorded by § 87(2)(b) (BR 02) and § 87(2)(b) (BR 03) and extended screenshots recorded using the SnagIt screen recording software, the investigation was able to track Insp. Palumbo's and PO Tran's movements from § 87(2)(b)'s arrest to their depiction in Capt. Hepworth's BWC footage (BR 17). The durational timestamp will be referenced. In extended screenshots, Insp. Palumbo is highlighted with a red circle and PO Tran is highlighted within a green circle. From 0:00 to 0:33, § 87(2)(b) footage is presented. From 0:33 to 1:01, both versions of the footage, unedited then edited, published in the New York Times are presented. From 1:01 to 1:53 in the concatenated footage, footage from § 87(2)(b) cellphone is presented (durational timestamps 1:01 to 1:40 in the original cellphone footage). At 1:08, Insp. Palumbo's and PO Tran's positions are marked. Three additional white-shirted officers subsequently approach § 87(2)(b)'s arrest, but they are apparently taller than Insp. Palumbo. Other Community Affairs officers also approach but their heights and builds are also apparently different than PO Tran's. At 1:21, Insp. Palumbo's and PO Tran's positions are marked again. At 1:46, Insp. Palumbo's and PO Tran's positions are marked again as they move down 4<sup>th</sup> Avenue toward Atlantic Avenue from § 87(2)(b)'s arrest. From 1:53 to 3:06 in the concatenated footage, footage from § 87(2)(b) cellphone is presented (durational timestamps 0:00 to 0:51 in the original cellphone footage). At 1:56, Insp. Palumbo's and PO Tran's positions are marked as the move down 4<sup>th</sup> Avenue toward Atlantic Avenue. At 2:18, Insp. Palumbo's and PO Tran's positions are marked again as PO Tran looks in the direction of Insp. Palumbo, who stands in the middle of the crosswalk, and walks toward him. At 2:27, Insp. Palumbo's and PO Tran's positions are marked again as they move halfway down the block toward Pacific Street, across the street from where § 87(2)(b) was arrested. At 2:42, Insp. Palumbo's and PO Tran's positions are marked again in the middle of the block. At 2:56, Insp. Palumbo's and PO Tran's positions are marked again as they walk back toward Atlantic Avenue. From 3:06 to 3:54, additional footage from § 87(2)(b) cellphone is presented (durational timestamps 1:58 to 2:33 in the original cellphone footage). At 3:12, Insp. Palumbo's and PO Tran's positions are marked in the middle of the block. At 3:34, Insp. Palumbo's and PO Tran's positions are marked again as they walk toward Atlantic Avenue. Insp. Palumbo turns to look in PO Tran's direction, then resumes walking. At 3:46, Insp. Palumbo's and PO Tran's positions are marked again at the corner of 4<sup>th</sup> Avenue and Atlantic Avenue. From 3:54 to 4:12, additional footage from § 87(2)(b) cellphone is presented (durational timestamps 1:14

to 1:27 in the original cellphone footage). At 4:01, Insp. Palumbo's and PO Tran's positions are marked on Atlantic Avenue just off 4<sup>th</sup> Avenue. They turn around and walk together back toward 4<sup>th</sup> Avenue. From 4:12 to the end, footage from Capt. Hepworth's BWC is presented (durational timestamps 0:07 to 0:21 in the original BWC footage). At 4:18, Insp. Palumbo's and PO Tran's positions are marked as they walk back onto 4<sup>th</sup> Avenue from Atlantic Avenue, with their faces clearly depicted.

[illegible]

§ 87(2)(b) did not cooperate in providing a verified statement to the CCRB. In her initial complaint, she described five to six officers break away from a larger group of approximately 30 officers to chase a “peaceful” individual who was identified via investigation as § 87(2)(b) and tackled him to the ground. Some of the officers held § 87(2)(b) down while others beat him with batons for approximately 30 seconds, even as § 87(2)(b) did not resist.

happened once or multiple times during the demonstrations. When provided § 87(2)(b)'s name and the alleged circumstances surrounding his arrest, Insp. Palumbo was not familiar with any of the specific details. Insp. Palumbo did not recall any specific physical interactions he had with any civilians on the ground. On or around the incident date, Insp. Palumbo did not recall any specific police action he took involving any arrests. He stated it was possible he was directly involved in physical apprehensions. Insp. Palumbo did not recall ever stepping on § 87(2)(b)'s or anyone else's head or other body parts during the protests. When presented § 87(2)(b)'s arrest photograph and arrest report, Insp. Palumbo did not recognize § 87(2)(b) nor the specific events and officers referenced in the report. When presented the above-referenced footage from Capt. Hepworth's BWC, he identified himself as the officer wearing a short sleeve white shirt and could not positively identify PO Tran due to the quality of the still-images presented and the fact that he was wearing a helmet and surgical mask by his chin. When presented the above-referenced footage taken by § 87(2)(b), Insp. Palumbo did not recognize himself or PO Tran, but could not rule out that they were the officers depicted in the images based on their physical appearances. Insp. Palumbo observed in this footage the short sleeve white shirt officer assisting other officers with an apprehension but did not observe any discrete physical interactions he had with § 87(2)(b). Insp. Palumbo was presented the above-referenced unedited version of the footage published in the New York Times. Insp. Palumbo was unfamiliar with the published article. Insp. Palumbo did not recognize himself or PO Tran but could not rule out that they were the officers depicted in the images based on their physical appearances. Insp. Palumbo observed in the video the short sleeve white shirt officer assisting uniformed officers with an apprehension by placing his foot on § 87(2)(b)'s shoulder blade to prevent him from fleeing. He did not see the foot interact with any other parts of § 87(2)(b)'s body. When asked if he himself stepped on § 87(2)(b), Insp. Palumbo stated he could not recall anything he did that night. He did not see the depicted officer step on the person's head. When presented the published edited version of the video from the New York Times, he still did not recognize the events or depicted individuals. Insp. Palumbo saw again the short sleeve white shirt officer's foot on § 87(2)(b)'s shoulder blade, then saw the foot slip from the shoulder blade onto § 87(2)(b)'s neck due to his resistance during his arrest. He did not see the foot interact with any other parts of § 87(2)(b)'s body. Insp. Palumbo did not know if the officer was himself. Insp. Palumbo did not recall observing any depicted events from the videos on the incident date and did not identify himself in any footage other than from Capt. Hepworth's BWC. He did not recall being a part of any enforcement activity on the incident date at the incident location. He stated this type of event happened multiple times over multiple days during the protests.

PO Tran, an Asian male standing at 6' tall and weighing 175 pounds, did not recall where he was or what he was doing at the time of the incident (BR 11-12). He was familiar with the specific incident location but did not recall being there on or around the incident date. PO Tran was posted by the Barclay's Center daily during the public demonstrations but could not confirm if he was there during this incident. PO Tran explained he was consistently assigned to drive Sgt. Kevin Royall of Patrol Borough Brooklyn South Community Affairs. He did not recall other bosses he worked with or was assigned with during the protests. PO Tran was never assigned with any other specific officer during the protests other than Sgt. Royall. PO Tran's post was not fixed. He did not recall observing or partaking in any arrests at the incident location. He did not recall observing any white-shirted officers partake in any arrests on the incident date. When presented the above-referenced footage from Capt. Hepworth's BWC, he identified himself. PO Tran was familiar with Insp. Palumbo but could not identify him as the depicted short sleeve white shirt officer with certainty. He never worked directly with nor was partnered with Insp. Palumbo during the protests and did not recall observing Insp. Palumbo during the protests. When presented the above-referenced footage from § 87(2)(b) and § 87(2)(b) cellphones, he identified himself but did not recognize Insp. Palumbo. He could not explain why he was depicted to be in the continued vicinity of a short sleeve white shirt officer. When presented the above-referenced footage from § 87(2)(b) cellphone, he stated he was possibly depicted but could not be sure based on the video.

When presented the published edited video from the New York Times, he stated he was possibly depicted but could not be sure based on the video. He did not recognize or recall observing on the incident date any of the events depicted in any of the footage. PO Tran never saw Insp. Palumbo or any other short sleeve white shirt officer step on any individual's head.

PO Proietti was assigned to a Mobile Field Force van at the time of the incident and responded to the vicinity of the incident location after reports of burglary at the nearby Modell's (BR 13). When he exited the van, he observed two officers he did not recognize chasing § 87(2)(b) on 4<sup>th</sup> Avenue. PO Proietti assumed he was a suspect in the burglary and chased him. § 87(2)(b) fell to the ground approximately 10-20 feet in front of PO Proietti. He observed approximately five officers physically restrain § 87(2)(b) on the ground and did not recall any white shirt officer or Community Affairs assisting in this arrest. PO Proietti turned away from the arrest to perform perimeter security. He did not recall observations he made of other officers during the arrest as they were behind him. He did not recognize any officers in his vicinity. He returned to his van immediately following § 87(2)(b)'s arrest. When presented the above-referenced footage from § 87(2)(b)'s cellphone, PO Proietti did not recognize any officer other than himself. He saw himself near the end of the video swinging his baton toward § 87(2)(b)'s legs area and missing before § 87(2)(b) falls, and then he himself immediately turning around and providing perimeter security. When presented the above-referenced published edited video from the New York Times, he could not elaborate on any further identifying information. He saw a short sleeve white shirt officer place his foot on or kick § 87(2)(b)'s head, shoulder, and/or neck area. PO Proietti did not recall observing this during the incident. Other than being interviewed once by Patrol Borough Brooklyn South Investigations Unit, he had no other interviews or communications about this incident.

PO Mejia-Morel was assigned to a foot patrol detail at the Barclay's Center at the time of the incident when he received a radio call from an unknown officer who requested assistance due to projectiles being thrown by protestors at the incident location (BR 14). He responded and observed two unknown uniformed officers chasing § 87(2)(b) and joined the chase to assist them. The other officers used their batons to trip § 87(2)(b) and take him to the ground. PO Mejia-Morel approached and struck § 87(2)(b) once with his baton, on his upper torso or back. § 87(2)(b) moved his arms back-and-forth and then pulled them to his front, but he did not hit any officers. Other officers also struck § 87(2)(b) upper arms or legs with their batons. These were not the two officers initially chasing § 87(2)(b). § 87(2)(b) was handcuffed in less than a minute after going to the ground. PO Mejia-Morel did not remember any officer holding him to the ground. He did not know who any of the other officers were. These officers told § 87(2)(b) to put his hands behind his back. He did not immediately comply with these commands but could be handcuffed after force was used against him. After using these commands, PO Mejia-Morel was able to handcuff him. When presented the above-referenced published edited footage from the New York Times, he believed it to be a depiction of § 87(2)(b)'s arrest. He identified himself as the officer in front of § 87(2)(b) striking him with a baton. He could not identify the short sleeve white shirt officer. He did not see this officer place his foot on § 87(2)(b)'s head and did not observe this happening at the time. He did not observe § 87(2)(b) moving his head in the video.

Lt. Ira Jablonsky did not recall where he was or what he was doing at the time of the incident but confirmed himself as PO Tran's supervisor (BR 15). He did not recall observing this allegation. He was unable to identify with certainty either Insp. Palumbo or PO Tran in the above-referenced footage but stated it was "possible" it was them.

This allegation was investigated by Patrol Borough Brooklyn South's Investigations Unit, led by Capt. Brian White of Patrol Borough Brooklyn South, under case file FI-2020-526 (BR 18). Their investigation was unable to identify the subject officer of this allegation. They determined he was a lieutenant based on his white shirt. Height of the subject officer was apparently determined due to the elimination of potential lieutenants based on height, but no specific dimension was cited within the report. A description match, including height, was noted for Lt. James Arneth of the 43<sup>rd</sup> Precinct's Detective Squad and Lt. Alex Molina of the 110<sup>th</sup> Precinct, who were both later ruled out

due to being assigned elsewhere at the incident time. On March 18, 2022, searches of the NYPD's MOS Photo Terminal indicated that Lt. Arneith was 5'10" and 185 pounds and Lt. Molina was 5'7" and 190 pounds. Capt. White's investigation determined the subject had a 9mm Smith & Wesson based on video analysis. When the CCRB attempted to interview Capt. White to discuss the findings of his report, his command confirmed that he retired immediately following the conclusion of this investigation.

In officers' use of force, and in a determination of reasonableness of that force, multiple factors are considered including the nature and severity of the crime/circumstances, actions taken by the subject and the duration of those actions, immediacy of the perceived threat or harm to any party, whether the subject is actively resisting custody, where the subject is attempting to evade arrest by flight, number of subjects in comparison to the number of MOS, physical condition and age of the subject in comparison to the MOS, presence of hostile crowd or agitators, and any stimulant or narcotic use that may affect pain tolerance or the likelihood of violence (BR 19). The use of deadly physical force against a person can only be used to protect MOS and/or the public from imminent serious physical injury or death NYPD Patrol Guide Procedure 221-01.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

#### **Civilian and Officer CCRB Histories**

- § 87(2)(b) has been party to one other CCRB complaint and has not been named as a victim in any other allegations (BR 20)
  - § 87(2)(b)
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 21).
- Insp. Palumbo has been a member-of-service for 21 years and has been a subject in three other CCRB complaints and five other allegations, none of which were substantiated § 87(2)(b)

[REDACTED]

**Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming emotional and mental distress, physical pain and suffering, humiliation, embarrassment, indignity and the loss of liberty and civil rights and seeking \$1,000,000 as redress (BR 22). A 50(h) hearing was held on § 87(2)(b) and can be found at BR 09.
- § 87(2)(b), § 87(2)(c) [REDACTED]
- § 87(2)(b), § 87(2)(c) [REDACTED]

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Squad: 11

Investigator:	<u>Benjamin Shelton</u>	<u>SI Benjamin Shelton</u>	<u>3/19/22</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Edwin Pena</u>	<u>IM Edwin Pena</u>	<u>03/19/2022</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date